



4510.43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 5

[Docket No. MSHA-2014-0016]

RIN: 1219-AB82

Fees for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is revising the Agency's regulation for administering fees for testing, evaluation, and approval of products manufactured for use in mines. This final rule revises the fees charged for these services. The final rule also includes a fee for approval services that MSHA provides to applicants or approval holders under the existing rule, but for which the Agency currently does not charge a fee, and for other activities required to support the approval process. This change will allow MSHA to charge fees that reflect the full cost of the approval services provided.

DATES: The final rule is effective on October 1, 2015.

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are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

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Availability of Information

Docket: Access rulemaking documents electronically at
<http://www.msha.gov/regsinfo.htm> or
<http://www.regulations.gov>. [Docket Number MSHA-2014-
0016]. Obtain a copy of a rulemaking document from the
Office of Standards, Regulations, and Variances, MSHA, by
request to 202-693-9440 (voice) or 202-693-9441
(facsimile). (These are not toll-free numbers.)

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I. Executive Summary

A. Purpose of Regulatory Action

As part of the U.S. Department of Labor, under the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended, MSHA's mission is to prevent death, disease, and injury from mining and promote safe and healthy workplaces for the Nation's miners. Since 1911, MSHA and its predecessor agencies have evaluated and tested products for use in mines to prevent fires, explosions, and accidents.

B. Summary of Major Provisions

Under the final rule, MSHA revises the hourly rate for the fees charged to applicants and approval holders to include all costs associated with the approval program. MSHA calculates the hourly rate by dividing the total approval program costs (direct and indirect) during a prior fiscal year, including internal quality control activities and post-approval product audits, by the number of total direct hours spent on approval program activities for the

same period. These changes in how MSHA calculates fees increase the hourly rate to \$121.

C. Costs and Benefits

This rule is not economically significant. The final rule will produce zero costs and zero benefits because the fees MSHA collects are transfer payments. MSHA discusses transfer payments in section IV of this preamble.

II. Background

Under various authorities,¹ MSHA historically has collected fees for its services in evaluating, testing, and approving products. Originally, the U.S. Bureau of Mines, an MSHA predecessor agency, billed applicants for approval services using published individual fee schedules, e.g., each approval part in Title 30, Chapter I, included a list of flat fees for different tests, evaluations, and other services performed for approval activities (30 FR 3752-3757). On May 8, 1987 (52 FR 17506), MSHA eliminated the individual fee schedules and established part 5, which created an hourly rate for administration and calculation

¹ These authorities are: Pub. L. 61-525, Ch. 285, 36 Stat. 1419 (1911); Pub. L. 62-386, Ch. 72, Sec. 5, 37 Stat. 682 (1913); Pub. L. 72-212, Ch. 314, Sec. 311, 47 Stat. 410 (1932); 30 U.S.C. 961(c)(2); and Title V of the Independent Offices Appropriations Act of 1952, Pub. L. 82-137, 65 Stat. 290 (1951), as amended, 31 U.S.C. 9701.

of fees for services in Title 30, Chapter I, Subchapter B, *Testing, Evaluation, and Approval of Mining Products*. On August 9, 2005 (70 FR 46336), MSHA revised part 5 and its fee procedures. That rule eliminated the application fee, allowed pre-authorization of expenditures for processing applications, and allowed outside organizations to set fees when conducting part 15 testing on MSHA's behalf.

Section 205 of the Chief Financial Officers Act of 1990 (CFO Act) and Office of Management and Budget (OMB) Circular No. A-25 Revised, User Charges (7/8/1993), require agencies to review the user charges in their programs to ensure that the charges reflect the full costs of the services provided. Traditionally, MSHA reviews its user charges annually; however, MSHA last revised its hourly rate under part 5 to \$97.00 on December 29, 2010 (75 FR 82074).

Under 30 U.S.C. 966, MSHA may retain up to \$2,499,000 of fees collected for the approval and certification of equipment, materials, and explosives for use in mines.

MSHA proposed revisions to its existing regulations on fees for testing, evaluation and approval of mining products on October 9, 2014 (79 FR 61035). This final rule addresses the comments received in response to the proposed rule.

III. Section-by-Section Analysis

In this final rule, the term "approval" includes approvals, certifications, acceptances, and evaluations MSHA issues under Title 30, Chapter I, Subchapter B, *Testing, Evaluation, and Approval of Mining Products*.

A. § 5.10 Purpose and Scope

Final § 5.10, like the proposal, provides the purpose and scope of the rule. It also establishes a system under which MSHA charges a fee for approval program services for products manufactured for use in mines. Like the proposal, the final rule identifies the activities in the approval program.

The approval program represents all the activities necessary for MSHA to assure that products approved for use in mines are designed, manufactured, and maintained in accordance with approval requirements. The approval program includes: (1) application processing; (2) testing and evaluation; (3) approval decisions; (4) post-approval activities; and (5) the termination of approvals.

1. Application processing begins when an applicant files a new application for approval. MSHA administratively reviews each new application and, on determining that the application is complete, prepares a maximum fee estimate and sends it to the applicant. The

applicant must agree to pay the estimated fee before MSHA will begin testing, as needed, and evaluating the product.

2. Testing and evaluation includes technical evaluation, analysis, test set up, testing, test tear down, any consultation on the application, and internal quality control activities. MSHA uses internal quality control programs to monitor and improve its testing and evaluation processes (e.g., internal administrative and technical reviews; internal audits; and calibration, repair, and maintenance of test equipment).

3. Following testing and evaluating a product, MSHA makes an approval decision and notifies the applicant by letter of the Agency's findings and decision. If the product is approved, the letter identifies the approved specifications for the design, construction, maintenance, and conditions of use for the product. If the product is not approved or if the application is cancelled, the letter identifies the reasons for the decision. All approval documentation is kept on file at MSHA.

4. MSHA also conducts the following post-approval activities:

- Changing approvals (e.g., extensions² of approvals, field modifications, and modification through the Revised Acceptance Modification Program (RAMP)).
- Conducting post-approval product audits and field audits.
- Responding to complaints.
- Investigating product failures.
- Monitoring regional or nationwide product recall or retrofit programs.
- Conducting administrative actions, such as transfer of approval numbers.

5. Termination of an approval may occur when an approval holder voluntarily requests termination of an approval, when MSHA revokes an approval because of compliance or safety issues, or when MSHA issues regulations that make an approval obsolete.

MSHA did not receive any comments on § 5.10 and it is finalized as proposed.

² An extension of the approval is a document MSHA issues that states that a change to the product previously approved by MSHA is approved and authorizes the continued use of the approval marking with the appropriate extension number for the change added.

B. *§ 5.30 Fee Calculation*

Final § 5.30, like the proposal, addresses the hourly rate calculation, the activities for which MSHA charges a fee, activities that are not subject to a fee, the fee estimate, and any changes to the fee estimate. Section 5.30 is finalized as proposed.

Under final § 5.30(a), like the proposal, MSHA will continue to charge a fee based on an hourly rate for approval program activities and other associated costs, such as travel expenses and part 15 fees. Part 15 fees for services provided to MSHA by other organizations will be set by those organizations.

Final paragraph § 5.30(b), like the proposal, is derived from existing § 5.30(a) and identifies the costs MSHA incurs in administering the approval program. Under the final rule, like the proposal, the hourly rate is calculated to reflect the costs of the overall approval program. Under the existing rule, the hourly rate includes only the application processing; testing and evaluation; and approval decision costs.

Also under the existing rule, some post-approval activities, such as changes to approvals, are included in the approval program costs used in calculating the hourly rate. Under the existing rule, however, MSHA had excluded

the costs of monitoring to assure approved products continue to be manufactured and maintained as approved because MSHA considered these activities to be enforcement activities rather than approval program activities (52 FR 17507-17508). As stated previously, OMB Circular No. A-25 requires that agencies recover the full costs of services rendered. To more accurately account for costs, MSHA proposed to include the direct and indirect cost of these post-approval product activities in the hourly rate calculation because these activities are an important part of the approval program. These activities assure MSHA, operators, and miners that products continue to be designed, manufactured, and maintained in accordance with the approval requirements.

Under the final rule, like the proposal, MSHA will continue to determine an hourly rate to cover direct and indirect costs. MSHA bases the hourly rate on all approval program costs the Agency incurred during a prior fiscal year. The hourly rate is the total approval program costs (direct and indirect) divided by the number of direct hours spent on all approval program activities. Final paragraph § 5.30(b) lists the approval program costs that MSHA will include in the hourly rate calculation.

Final paragraph § 5.30(b)(1), like the proposal, defines direct costs as consisting of compensation and benefit costs for all hours worked in support of the approval program and is derived, in part, from existing § 5.10(b)(1) and (b)(2). These costs include approval program activities, such as testing and evaluation, including internal quality control; and post-approval activities, including post-approval product audits.

Final paragraph § 5.30(b)(2), like the proposal, defines indirect costs and is derived, in part, from existing § 5.10(b)(3) and (b)(4). Indirect costs include the approval program's proportionate share of the hours worked to manage and operate the Approval and Certification Center (A&CC). These costs are associated with activities required for information technology (IT) and A&CC management and administration. Indirect costs also include the approval program's proportionate share of depreciation for buildings, their improvements, and equipment; a proportionate share of utilities, equipment rental, facility and equipment maintenance, security, supplies and materials, and other costs necessary for the operation and maintenance of the A&CC; and a proportionate share of Department of Labor-provided services that would include financial systems, and audit and IT support.

A commenter asked what MSHA considers to be indirect costs. Section 5.30(b)(2) in this final rule and in the preamble to the proposed rule (79 FR 61037) defines indirect costs. MSHA's definition of indirect costs is consistent with OMB Circular No. A-25. MSHA determined that the definition in the final rule adequately addresses the commenter's question.

Final § 5.30(c), like the proposal, is derived from existing § 5.10(b) and includes activities for which MSHA charges a fee. These activities continue to include application processing (e.g., administrative and technical review of applications, computer tracking, and status reporting); testing and evaluation (e.g., analysis of drawings, technical evaluation, testing, test set up and test tear down, and internal quality control activities); approval decisions (e.g., consultation on applications, records control and security, document preparation); and post-approval activities, such as changes to approvals. Like the proposal, final § 5.30(c) describes internal quality control activities and post-approval product audits as part of the approval program, as MSHA is required to recover costs associated with the approval program (OMB Circular No. A-25).

A commenter objected to MSHA charging for internal quality control. Under the final rule, like the proposal, MSHA will charge applicants and approval holders a fee for internal quality control activities. These activities are an integral part of the approval program. MSHA uses internal quality control activities to monitor and improve the Agency's testing and evaluation processes and for quality control. These internal quality control activities assure applicants and approval holders that consistent, accurate, and up-to-date scientific methods are used when MSHA is evaluating and testing products. For example, MSHA has standard procedures to repair, maintain, and calibrate laboratory equipment in accordance with the manufacturers' specifications. Each applicant and approval holder receives a benefit from these internal quality control activities.

MSHA will distribute the hours worked and costs of internal quality control activities, based on the hours worked on each application. Hours worked on specific internal quality control activities, however, are not charged to a particular application. Instead, MSHA will charge each applicant a prorated share. MSHA will calculate the prior year's internal quality control hours as a percentage of total hours, multiply that percentage by

the number of direct hours worked on a particular application, and add the result to the number of direct hours worked on that application.

A commenter objected to MSHA charging a fee for post-approval product audits stating that MSHA could charge for exaggerated paperwork evaluations and could audit the same company as often as they want. Under existing 30 CFR 7.8(b), 14.10(b), and 15.10(b), MSHA audits a specific product no more than once a year, except for cause, and the approval-holder may attend any testing MSHA conducts on their product. Post-approval product audits are part of the approval program (post-approval activities) because they are necessary to assure that products have been manufactured as approved.

Under the final rule, like the proposal, MSHA will charge approval holders for the Agency's post-approval product audits, but will not charge for investigations or audits based on complaints about the products.

Internal quality control activities and post-approval product audits assure MSHA, operators, and miners that products are and continue to be designed, manufactured, and maintained in accordance with the approval requirements to ensure the health and safety of miners. For these reasons, MSHA will charge a fee for these activities.

Existing § 5.10(c)(1), (c)(2), (c)(3), and (c)(4) are revised and redesignated, in part, as final § 5.30(d). Final § 5.30(d), like the proposal, addresses the activities for which MSHA will not charge a fee. These include technical assistance not related to approval applications; technical programs, including development of new technology programs; participation in research conducted by other government agencies or private organizations; and regulatory review activities, including participation in the development of health and safety standards, regulations, and legislation.

MSHA did not receive any comments on proposed § 5.30(d) and it is finalized as proposed.

Existing paragraphs § 5.30(b), (c), and (d) are redesignated as final paragraphs § 5.30(e), (f), and (g) under § 5.30 Fee Calculation.

Final paragraph § 5.30(e), like the proposal, is revised by renumbering existing paragraphs § 5.30(b)(1) and (b)(2) as § 5.30(e)(1) and (e)(2), respectively. Final paragraphs § 5.30(f) and (g) remain unchanged.

MSHA did not receive any comments on § 5.30(e), (f), and (g) and these sections are finalized as proposed.

C. *§ 5.40 Fee Administration*

Final § 5.40, like the proposal, is revised by adding "approval holders" to entities to be billed and replacing "processing of the application is completed" with "approval program activities are completed." MSHA will continue to charge applicants a fee for approvals and some post-approval activities (e.g., modification to approvals), and will charge approval holders a fee for post-approval product audits when the approval program activities are completed.

MSHA received no comments on proposed § 5.40 and it is finalized as proposed.

D. *§ 5.50 Fee Revisions*

Final § 5.50, like the proposal, replaces "fee schedule" with "hourly rate" because MSHA no longer has a fee schedule. A commenter questioned why MSHA has a scheduling fee. As discussed in this final rule and in the preamble to the proposed rule, MSHA eliminated the individual fee schedules in 1987 and created a single hourly rate for calculation of fees.

Like the proposal, MSHA is revising the hourly rate from \$97 under the existing rule to \$121 using fiscal year (FY) 2012 data. A commenter objected to MSHA raising the hourly rate, citing challenging times being faced by the

coal industry. This commenter was particularly concerned about the impact of the increase in fees on a small manufacturing company in the coal service industry. In response to this comment, MSHA states below, in Section V. Feasibility, that the increase in the hourly rate is below one percent of the estimated annual revenues of the impacted industries. The final rule, like the proposal, removes the term "fee schedule" from § 5.50 and it is finalized as proposed.

E. Other Comments

MSHA received general comments that objected to the overall rulemaking and to MSHA collecting more money than the Agency has the authority to retain. Under OMB Circular No. A-25, MSHA is required to review the user fees in its programs to ensure that the charges reflect the full costs of the services provided. This action transfers the cost of MSHA approval program services from the taxpayer to the applicants or approval holders who benefit from these services. Fees collected in excess of those the Agency is authorized to retain are sent back to the U.S. Treasury.

**IV. Executive Order 12866: Regulatory Planning and Review
and Executive Order 13563: Improving Regulation and
Regulatory Review**

Executive Orders (E.O.) 12866 and 13563 generally direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. To comply with these Executive Orders, MSHA has included the following impact analysis.

Section 3(f) of the E.O. 12866 defines a significant regulatory action as an action that is likely to result in a rule that: (1) has an annual effect on the economy of \$100 million or more, or adversely and materially affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan

programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this is a significant regulatory action.

The final rule would not have an annual effect of \$100 million or more on the economy and, under E.O. 12866, is not considered economically significant. MSHA has not prepared a separate regulatory economic analysis for this rulemaking. Rather, the analysis is presented below.

A. Overview

MSHA will continue to charge a fee for approval services based on an hourly rate. As under the existing rule, MSHA's hourly rate will include direct costs and indirect costs. However, under the final rule, MSHA will calculate the hourly rate by dividing all approval program costs incurred by the Agency during a prior fiscal year by the number of direct hours spent on approval program activities for the same period.

The final rule will increase the hourly rate from \$97 to \$121, an increase of \$24.

MSHA will also begin to charge a fee for internal quality control activities and post-approval product audits. In FY 2012, MSHA collected approximately \$1.2

million in fees. Under this final rule, MSHA estimates that the Agency would have collected a total of \$2.7 million in fees in FY 2012, an increase of \$1.5 million.

The charges under the final rule are fees and are considered transfer payments, not costs, under OMB Circular No. A-4, Regulatory Analysis (09/17/2003). Transfer payments are payments from one group to another that do not affect total resources available to society. Under the final rule, the applicant or the approval holder pays for services for which they receive a benefit. These services are currently paid for by the taxpayer.

Because the fees MSHA collects are a transfer, there are zero costs and zero benefits regardless of the discount rate (OMB Circular No. A-4, Regulatory Analysis (09/17/2003,) Section (G) Accounting Statement).

B. Benefits

The rule will not produce any quantifiable benefits because the only impact is the transfer payment.

C. Projected Impacts

MSHA analyzed A&CC invoice data from FY 2012. Using the U.S. Economic Census North American Industry Classification System (NAICS) data, MSHA estimated the impact of the final rule on mining and non-mining industries. NAICS is the standard used by Federal

statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy (<http://www.census.gov/eos/www/naics/>).

From the A&CC post-approval product audit data and FY 2012 invoices, MSHA identified 30 industries that received A&CC approval program services. MSHA grouped this data into three general industry categories: Coal Mining, Other Mining, and Non-Mining.

MSHA estimated the fees that will be collected under this final rule by summing the impact of the hourly rate increase and the increase from charging for internal quality control activities and post-approval product audits. Under this final rule, fees will increase by approximately \$1.5 million annually (\$0.3 million from the hourly rate increase + \$1.1 million for internal quality control activities + \$0.1 million for post-approval product audit activities). Of the \$1.5 million, the increase in fees for the coal and other mining industries will total approximately \$0.9 million annually. The remaining \$0.6 million will be distributed among the non-mining industries that seek product approval from MSHA.

MSHA estimated the fee increase from the final hourly rate by multiplying the number of chargeable hours for FY

2012 (12,189 hours) by the final hourly rate of \$121. In 2012, MSHA estimated that the final hourly rate would have resulted in approximately \$1.5 million in fees collected, an increase of \$300,000 ($(\$121 \text{ new rate} - \$97 \text{ old rate}) \times 12,189 \text{ hours}$).

MSHA also estimated the fees from charging for internal quality control activities. MSHA uses internal quality control activities to monitor and improve the Agency's testing and evaluation processes. These activities include internal process reviews; maintaining laboratory equipment; and repairing, maintaining, and calibrating laboratory equipment to assure the equipment produces reliable and accurate results. In FY 2012, MSHA spent 9,015 hours on these activities. MSHA multiplied the 9,015 hours by the proposed \$121 hourly rate. This results in an estimated annual impact of \$1.1 million.

In addition, MSHA analyzed post-approval product audit data from 2008 to 2012 to estimate the increase in fees from charging for these services. In any given year, post-approval product audits are completed only on a subset of the total products approved by the A&CC. In 2012, MSHA spent approximately 1,000 hours on 125 post-approval product audits. Multiplying the 1,000 hours by the proposed \$121 hourly rate results in an estimated annual

impact of \$121,000. The average estimated impact would have been \$970 for each approval holder audited in 2012.

V. Feasibility

MSHA concludes that the final rule would be economically feasible.

MSHA has traditionally used a revenue screening test – whether the annualized compliance costs of a regulation are less than one percent of revenues (dollar change/revenue), or are negative (i.e., provide net cost savings) to establish presumptively that compliance with the regulation is economically feasible. MSHA relies on Agency data to identify revenue for covered mining entities and the 2007 Economic Census data to identify revenue by NAICS industry categories for non-mining entities.

MSHA performed the revenue screening test comparing the annual impact to annual revenues for all three categories and found that the percentage impact rounds to zero percent of revenue in each case. Given the relatively small impact compared to industry total revenues, any further analysis would not be productive.

Because the estimated impacts are below one percent of estimated annual revenue of the impacted industries, MSHA concludes that compliance with the provisions of the final rule is economically feasible.

**VI. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 13272:
Proper Consideration of Small Entities in Agency Rulemaking**

The Regulatory Flexibility Act of 1980 (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 and other statutes, and E.O. 13272 requires agencies to consider the effects of their final and existing regulations on small entities and to examine alternatives that would minimize the small entity impacts while still meeting the regulations' purposes. MSHA has reviewed the final rule to assess the potential impact on small businesses, small governmental jurisdictions, and small organizations.

The applicants who will be affected by the final rule represent 30 industries. The Small Business Administration's (SBA's) size standard for a small entity (13 CFR 121.201) differs by industry code. For mining, SBA defines a small entity as one with 500 or fewer employees. For non-mining industries that would be impacted by this rule, SBA defines a small entity as one that has revenues of \$7.5 million or less. MSHA used the SBA's definitions for a small entity, FY 2012 invoice data, and NAICS industry data to evaluate the small business impact.

For the non-mining industries, the affected industries represent small business revenues of approximately \$474 billion. The final rule will increase fees for non-mining industries by approximately \$0.5 million. The impact from an increase in fees is essentially zero percent of revenue (\$0.5 million / \$474 billion).

For the mining industries, MSHA data shows small coal mine revenues of \$30 billion. The final rule will increase fees for small coal mines by approximately \$0.9 million. MSHA data shows other small mine revenues (not coal mines) of \$57 billion. The final rule will increase fees for small mines other than coal by approximately \$6,000. The impact from an increase in fees is zero percent for both mining categories.

Approximately \$100,000 in increased fees is primarily attributable to foreign entities. MSHA concludes that the impact on the U.S. economy and its businesses would be *de minimis*.

Several commenters stated that large companies could absorb the increase in fees and that the small companies would be adversely affected. MSHA's analysis determined that the impact of the final rule for both small mining and small non-mining entities is essentially zero percent of annual revenues. Additionally, considering MSHA's

traditional definition of small mines (1-19 employees), the impact of the final rule is essentially zero percent. The Agency concludes that one rate is appropriate for all company sizes.

MSHA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act of 1995

This final rule contains no information collections subject to review by OMB under the Paperwork Reduction Act of 1995. The paperwork associated with applications for approval are considered under the specific part in Title 30, Chapter 1, Subchapter B that contains the requirements for the specific product submitted for MSHA approval.

VIII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the final rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). MSHA has determined that this final rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments; nor would it increase private sector expenditures by more than \$100 million (adjusted for inflation) in any one year or

significantly or uniquely affect small governments.

Accordingly, under the Unfunded Mandates Reform Act, no further Agency action or analysis is required.

B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note), as amended, requires agencies to assess the impact of agency action on family well-being. MSHA has determined that this final rule would have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. Accordingly, MSHA certifies that this final rule will not impact family well-being.

C. Executive Order 12630: Government Actions and Interference with Constitutionally Protected Property Rights

Executive Order 12630 requires Federal agencies to "identify the takings implications of final regulatory actions" MSHA has determined that this final rule will not include a regulatory or policy action with takings implications. Accordingly, under E.O. 12630, no further Agency action or analysis is required.

D. *Executive Order 12988: Civil Justice Reform*

Executive Order 12988 contains requirements for Federal agencies promulgating new regulations or reviewing existing regulations to minimize litigation by eliminating drafting errors and ambiguity, providing a clear legal standard for affected conduct rather than a general standard, promoting simplification, and reducing burden. MSHA has reviewed this final rule and has determined that it would meet the applicable standards provided in E.O. 12988 to minimize litigation and undue burden on the Federal court system.

E. *Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

MSHA has determined that this final rule will have no adverse impact on children. Accordingly, under E.O. 13045, no further Agency action or analysis is required.

F. *Executive Order 13132: Federalism*

MSHA has determined that this final rule does not have federalism implications because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Accordingly, under E.O. 13132, no further Agency action or analysis is required.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

MSHA has determined that this final rule does not have tribal implications because it would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Accordingly, under E.O. 13175, no further Agency action or analysis is required.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

MSHA has reviewed this final rule for its impact on the supply, distribution, and use of energy because it applies to the coal mining industry. Insofar as the final rule would result in an increase to the yearly transfer of \$0.9 million for the coal mining industry relative to annual revenues of \$41 billion in 2012, it is not a "significant energy action" because it is not "likely to have a significant adverse effect on the supply, distribution, or use of energy (including a shortfall in

supply, price increases, and increased use of foreign supplies).” Accordingly, under E.O. 13211, no further Agency action or analysis is required.

List of Subjects in 30 CFR Part 5

Mine safety and health.

Dated: July 23, 2015

Joseph A. Main
*Assistant Secretary of Labor for
Mine Safety and Health*

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, as amended, MSHA is revising 30 CFR part 5 to read as follows:

PART 5-FEES FOR TESTING, EVALUATION, AND APPROVAL OF MINING PRODUCTS

Sec.

- 5.10 Purpose and scope.
- 5.30 Fee calculation.
- 5.40 Fee administration.
- 5.50 Fee revisions.

Authority: 30 U.S.C. 957.

§ 5.10 Purpose and scope.

This part establishes a system under which MSHA charges a fee for services provided. This part includes

the management and calculation of fees for the approval program, which includes: application processing, testing and evaluation, approval decisions, post-approval activities, and termination of approvals.

§ 5.30 Fee calculation.

(a) *Fee calculation.* MSHA charges a fee based on an hourly rate for Approval and Certification Center (A&CC) approval program activities and other associated costs, such as travel expenses and part 15 fees. Part 15 fees for services provided to MSHA by other organizations may be set by those organizations.

(b) *Hourly rate calculation.* The hourly rate consists of direct and indirect costs of the A&CC's approval program divided by the number of direct hours worked on all approval program activities.

(1) Direct costs are compensation and benefit costs for hours worked on approval program activities.

(2) Indirect costs are a proportionate share of the following A&CC costs:

(i) Compensation and benefit hours worked in support of all A&CC activities;

(ii) A&CC building and equipment depreciation costs;

(iii) A&CC utilities, facility and equipment maintenance, and supplies and materials; and

(iv) Information Technology and other services the Department of Labor provides to the A&CC.

(c) *Fees are charged for—*

(1) Application processing (e.g., administrative and technical review of applications, computer tracking, and status reporting);

(2) Testing and evaluation (e.g., analysis of drawings, technical evaluation, testing, test set up and test tear down, and internal quality control activities);

(3) Approval decisions (e.g., consultation on applications, records control and security, document preparation); and

(4) Two post-approval activities: changes to approvals and post-approval product audits.

(d) *Fees are not charged for—*

(1) Technical assistance not related to processing an approval application;

(2) Technical programs, including development of new technology programs;

(3) Participation in research conducted by other government agencies or private organizations; and

(4) Regulatory review activities, including participation in the development of health and safety standards, regulations, and legislation.

(e) *Fee estimate.* Except as provided in paragraphs (e)(1) and (2) of this section, on completion of an initial administrative review of the application, the A&CC will prepare a maximum fee estimate for each application. A&CC will begin the technical evaluation after the applicant authorizes the fee estimate.

(1) The applicant may pre-authorize an expenditure for services, and may further choose to pre-authorize either a maximum dollar amount or an expenditure without a specified maximum amount.

(i) All applications containing a pre-authorization statement will be put in the queue for the technical evaluation on completion of an initial administrative review.

(ii) MSHA will concurrently prepare a maximum fee estimate for applications containing a statement pre-authorizing a maximum dollar amount, and will provide the applicant with this estimate.

(2) Where MSHA's estimated maximum fee exceeds the pre-authorized maximum dollar amount, the applicant has the choice of cancelling the action and paying for all work done up to the time of the cancellation, or authorizing MSHA's estimate.

(3) Under the Revised Acceptance Modification Program (RAMP), MSHA expedites applications for acceptance of minor changes to previously approved, certified, accepted, or evaluated products. The applicant must pre-authorize a fixed dollar amount, set by MSHA, for processing the application.

(f) If unforeseen circumstances are discovered during the evaluation, and MSHA determines that these circumstances would result in the actual costs exceeding either the pre-authorized expenditure or the authorized maximum fee estimate, as appropriate, MSHA will prepare a revised maximum fee estimate for completing the evaluation. The applicant will have the option of either cancelling the action and paying for services rendered or authorizing MSHA's revised estimate, in which case MSHA will continue to test and evaluate the product.

(g) If the actual cost of processing the application is less than MSHA's maximum fee estimate, MSHA will charge the actual cost.

§ 5.40 Fee administration.

Applicants and approval holders will be billed for all fees, including actual travel expenses, if any, when approval program activities are completed. Invoices will

contain specific payment instruction, including the address to mail payments and authorized methods of payment.

§ 5.50 Fee revisions.

The hourly rate will remain in effect for at least one year and be subject to revision at least once every three years.

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